

**Mail Stop Appeal Brief – Patents**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**In Re: Patent Application of Charles A. Eldering et al.**

Conf. No.: 9699	:	Group Art Unit: 3688
Appln. No.: 09/857,160	:	Examiner: Raquel Alavarez
Filing Date: 01 JULY 2001	:	Attorney Docket No.: T705-13
Title: Subscriber Identification System		

**APPELLANTS' REPLY BRIEF TO THE EXAMINER'S ANSWER**

In response to the Examiner's Answer dated August 7, 2008, and further to the Appeal Brief filed June 3, 2008, Applicants hereby submit a Reply Brief in accordance with 37 C.F.R. §41.41 for the above-referenced application.

A Request for Oral Hearing under 37 C.F.R. §41.47 is submitted herewith.

This Reply Brief is being filed in response to the Examiner's Answer, dated August 8, 2008 (Examiner's Answer). All of the arguments set forth in the Appellants' Appeal Brief, filed June 3, 2008 (Appeal Brief), are incorporated herein by reference.

### **THE EXAMINER INCORRECTLY APPLIES WILLIAMS' TEACHINGS**

With respect to the Examiner's "Response to Argument" set forth at pages 6 and 7 of the Examiner's Answer, Applicants respectfully submit that the Examiner continues to misconstrue the teachings of U.S. Patent No. 5977964 to Williams ("Williams").

Williams monitors user inputs and then compares those inputs and system settings to stored user profile information to identify the user presently using the system. Williams re-configures the system in accordance with the stored user profile, such that the user's preferences are applied.

In contrast, the method of claim 1 monitors viewing sessions and clusters viewing sessions based on subscriber interactions to identify a user.

#### **A. Williams does not cluster viewing sessions**

The Examiner's contention that identifying existing programs according to genre equates to clustering viewing sessions is disingenuous. Contrary to the Examiner's reading, Fig. 8 of Williams merely illustrates the application of a user profile to the system. The fact that the user profile database 800 in Williams categorizes or identifies programs according to genre has nothing to do with actually clustering viewing sessions or periods of interaction by a user. The user profile database 800 in Williams simply identifies which type of programs a particular user prefers (i.e., as part of a user profile), and identifies those programs based on genre or program content. The programs identified in Williams as a result of applying the user profile to available programs are not identified or grouped as a result of clustering subscriber viewing sessions. In

contrast, claim 1 recites the clustering of viewing sessions based on a common identifier among the viewing sessions. In short, identifying TV programs based on genre is not analogous to clustering viewing sessions.

With respect to Williams' determination of which user is currently using the system (in an effort to select which profile to apply), Williams does not cluster or group anything. Rather, Williams compares initial viewer interactivity and system settings with known user profiles. In making such a determination, Williams does not cluster subscriber viewing sessions based on a common identifier. Accordingly, Williams does not disclose this feature of the claims.

B. Williams does not identify a subscriber independent of prior known subscriber characteristics.

With respect to the Examiner's taking of Official Notice that identifying demographic information of who is currently watching a TV program without having prior information on the viewers is well known (see page 6 of Examiner's Answer), Applicants respectfully disagree that such a concept – even if true – renders the claims obvious when combined with Williams. More specifically, claim 1 recites, “wherein the clustering occurs independently of subscriber characteristics established prior to the monitoring...”. Thus, claim 1 specifically excludes using pre-existing information about the subscriber (demographic or otherwise) to identify the subscriber or even characteristics of the subscriber. Rather, in claim 1, information about the subscriber (or even the number of subscribers) is obtained as a result of clustering viewing sessions of subscriber activity. That is, in claim 1, the clustering of viewing sessions occurs based on the viewing sessions themselves – not a comparison with extrinsic information as argued by the Examiner.

In the Examiner's proposed combination, demographic information about the user would need to be established prior to monitoring the viewing sessions. Claim 1 excludes this possibility. It cannot therefore be said that claim 1 is obvious over William in view

of Official Notice, since not all of the elements of independent claim 1 are taught by such a combination.

***Conclusion***

In view of the foregoing, as well as the reasons set forth in the Appeal Brief, Applicants respectfully submit that the Examiner has not met the burden of *prima facie* obviousness to support the rejection of claims 1-4 and 15-23. Accordingly, for the reasons detailed herein and in the Appeal Brief, independent claims 1, 15, 16 and 23, and all claims dependent thereon, including claims 2-4 and 17-22, are allowable over the combination of Williams in view of Official notice. Applicants respectfully request that the Board reverse the Examiner's rejections of the claims and remand this application for issue.

Respectfully submitted,

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